

**INDIANA STATE RECOUNT COMMISSION
MINUTES OF THE MAY 30, 2018 MEETING**

MEMBERS PRESENT: The Honorable Connie Lawson, Chairman of the Indiana State Recount Commission ("the Commission"); Matthew Huckleby, Member; Michael Claytor, Member.

MEMBERS ABSENT: None.

STAFF ATTENDING: J. Bradley King, Majority Counsel; Matthew Kochevar, Minority Counsel; Mr. Andrew Norris, Deputy Recount Director.

OTHERS ATTENDING: Mr. Brandon Clifton, Deputy Secretary of State; Ms. Angela Nussmeyer, Indiana Election Division Co-Director; Mr. Dale Simmons, Indiana Election Division Co-General Counsel; Major Larry Turner, Indiana State Police.

1. CALL TO ORDER:

The chair called the meeting of the Commission to order at 9:05 a.m. in State House Room 156A, 200 West Washington Street, Indianapolis, Indiana.

2. COMMISSION BUSINESS:

The Commission transacted the business and took the official actions set forth in the Transcript prepared by Rhonda Hobbs, RPR, Connor Reporting, Inc. which is incorporated by reference into these minutes.

The Commission approves the Transcript, with the correction of the following scrivener's errors:

Page 5, line 16, replace "Norris" with "Notoras".

Page 6, line 25, replace "now" with "not".

Page 11, line 7, replace "Mrs." with "Messrs.".

Page 11, line 14, replace "HUCKLEY" with "HUCKLEBY".

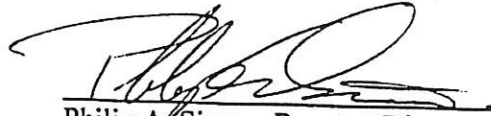
Page 15, line 4, replace "HUCKLEY" with "HUCKLEBY".

Page 15, line 22, replace "HUCKLEY" with "HUCKLEBY".

ADJOURNMENT:

There being no further business before the Commission, the Commission adjourned at 9:20 a.m.

APPROVED:

A handwritten signature in black ink, appearing to read 'Philip A. Sicuso', written over a horizontal line.

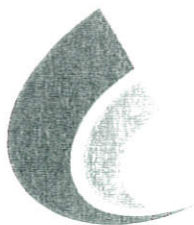
Philip A. Sicuso, Recount Director
Acting under the authority of the
Indiana State Recount Commission
Pursuant to Order 2018-01

In the Matter Of:

RECOUNT COMMISSION PUBLIC SESSION NOTICE

TRANSCRIPT OF HEARING

May 30, 2018



CONNOR
REPORTING

CONNOR REPORTING

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Indianapolis, IN 46204

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1 INDIANA ELECTION COMMISSION

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3 Chairman Connie Lawson

4 Commission Member Michael Claytor

5 Commission Member Matt Huckleby

6 Brad King - Majority Co-Counsel

7 Matthew Kochevar - Minority Co-Counsel

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1 CHAIRMAN C. LAWSON: It's 9:05. I
2 officially call the Recount Commission to order.
3 Since all three members are present of the
4 commission, I see a quorum for this meeting.
5 I'm Connie Lawson, and I serve as Secretary of
6 State, and as Secretary of State, I serve as
7 chair and member of the Recount Commission.

8 I'm joined by Commissioner Michael Claytor
9 and Commissioner Matthew Huckleby. The Election
10 Division of the Secretary of State's Office
11 provides administrative support to the Recount
12 Commission, and Brad King serves as the majority
13 counsel to the Commission, and Matthew Kochevar
14 serves as minority counsel.

15 Our court reporter today is Rhonda Hobbs
16 from Connor Reporting. Welcome Rhonda. So
17 before I begin, I just want to remind everyone
18 on behalf of the court reporter, to identify
19 yourself when beginning to speak -- it helps
20 with the flow of her notes, spell your name when
21 identifying yourself, and speak clearly, and do
22 not speak at the same time as others are
23 speaking.

24 First, I want to make sure that we have
25 complied with the Open Door Law and the notice

1 of this commission, so I would recognize Brad
2 and Matthew to confirm that the posting of the
3 meeting notice was in compliance.

4 MR. B. KING: Madam Chairman, Members of
5 the Commission, a copy of the notice is in your
6 binder. It was posted in compliance with the
7 Open Door Law to give notice for this meeting.

8 CHAIRMAN C. LAWSON: Thank you. I also
9 want to make sure that we recognize Andrew
10 Norris, who is our recount director -- deputy
11 recount director. He is filling in for
12 Phil Sicuso, who had a formerly planned family
13 vacation and was unable to be here, so thank you
14 for being here, Andrew.

15 So now I would like to recognize
16 Major Larry Turner of the Indiana State Police
17 who is here. Major Turner, I note that the
18 members' binders includes a document indicating
19 that service has been made by the State Police
20 in the matter pending before the Commission
21 today; would you please confirm that, and if you
22 would stand up and state your name and spell
23 your name?

24 MAJOR L. TURNER: I'm Larry Turner. Last
25 name is T-U-R-N-E-R, and I can confirm that

1 those documents were sent to our post at
2 Lafayette and served by troopers there.

3 CHAIRMAN C. LAWSON: Thank you. Thank you.

4 Next, we will take a look at the petitions for
5 recount and contest for the Democratic Party
6 nomination for Statehouse District 25, and I'd
7 like to recognize Matthew Kochevar, our minority
8 counsel, to review the contents of the binders
9 regarding the recount and the contest petitions.
10 Matthew.

11 MR. M. KOCHEVAR: Madam Chair, Members of
12 the Commission, in your binders, you have a
13 petition asking for a recount and contest in the
14 Indiana Democratic Primary for the nomination of
15 House District 25 that was filed by Candidate
16 Justin Norris, who was in a contested primary
17 with Candidate Maurice Fuller.

18 We have -- the counsels have prepared a
19 memo describing the law and the requirements for
20 filing a petition for recount and contest, which
21 I would like to summarize, as well as going
22 through the petition.

23 The requirements for filing a petition for
24 recount and contest can be found in Indiana Code
25 3-12-11 generally. For filing a recount, any

1 candidate for the nomination of a legislative
2 office in a primary election is entitled to have
3 the votes cast for that office recounted under
4 this chapter.

5 Included in that chapter contains deadlines
6 for filing that petition for a recount and
7 contest, as well as stating the requirements
8 that each petition must include for a petition
9 to be considered as complete.

10 There's also a section in this chapter of
11 the Indiana Election Code about petitions being
12 amended after the original has been filed.
13 Generally, those petitions are allowed to be
14 amended based on the conditions set by the State
15 Recount Commission.

16 The State Recount Commission would
17 generally have the ability to establish whatever
18 conditions those may be, except for as provided
19 in Section 7(b) where the Commission is not
20 allowed to have a petition amended for the
21 following reasons:

22 1. The original petition failed to comply
23 with the requirements in Section 3. Those are
24 the requirements that a petition must have for
25 it to be complete, as well as a petition can now

1 be amended if it was not filed before the
2 deadline specified in Section 2. That is 14
3 days after the primary in regards to a candidate
4 filing a petition for a recount.

5 Recounts also require that a cash deposit
6 be made to the State Recount Fund. In this
7 case, where the difference in votes was greater
8 than 1 percent, the minimum cash deposit is
9 \$100, and that covers the first ten precincts
10 that are asked to be recounted by the
11 Petitioner.

12 Any precinct beyond ten increases that
13 deposit by \$100 per precinct. In this case, the
14 Petitioner has only asked for a recount of ten
15 precincts. And so based on -- as we provide in
16 our memo, we have, as counsels, reached the
17 conclusion that the cash deposit was \$100, and
18 the Indiana Election Division which took that
19 deposit has a record that \$100 was taken at the
20 time of filing.

21 This petition that we have before us was
22 filed on May the 21st, 2018, at 1:57 p.m. I
23 will note that as an employee of the Election
24 Division, I took that filing and placed a file
25 stamp on it and provided a copy to the person

1 who delivered the petition.

2 The petition asked for, again, a recount in
3 the Democratic Primary for House District 25.

4 It has asked for ten precincts included
5 throughout that house district. It does contain
6 the necessary requirements in Section 3 for
7 filing the petition of recount.

8 It states that the candidate is entitled to
9 a recount. The precincts that the Petitioner
10 wishes to have recounted, the names and
11 addresses of both the Petitioner and the
12 Candidate who was in the contested primary, as
13 well as the other requirements stated in Section
14 3.

15 The main purpose, at least for me for
16 providing you with this memo, is that in our
17 review, after the filing deadlines for the
18 petition and cross-petition has passed, is that
19 counsels had discovered that there is an error
20 in this petition. That error would be that
21 there is no verification statement.

22 Under the State recount law, and as
23 provided in various opinions before our
24 appellate court and the State Supreme Court,
25 petitions for recount and contest must have a

1 verification statement. If you look at page 5
2 of our memo, Mr. King and myself have provided
3 an example of what that verification would look
4 like. This verification was taken from the
5 petition for recount and was provided by
6 Candidate Jesse Kharbanda in the 2016 Primary
7 recount for Senate District 36.

8 We will note that we were unable to find
9 any such verification stated in any manner that
10 would be considered a verification statement in
11 the petition before the Commission today.

12 It is well-settled law that the
13 verification statement is a requirement of any
14 petition for a recount and contest. It is
15 considered a jurisdictional matter. That would
16 mean that without this verification statement
17 included in the petition that was filed before
18 the deadline, this Recount Commission does not
19 have the ability -- does not have the subject
20 matter jurisdiction to hear the petition.

21 It is also settled that the Commission does
22 not have the power to grant Petitioner an
23 ability to amend their originally filed petition
24 to include this verification statement.

25 The only recognized course of action that

1 this commission can consider, in the counsels'
2 opinion, would be for this matter to be
3 dismissed.

4 And so at the end of our memo here, the
5 counsels recommend the Commission take two
6 actions: No. 1. Find that the Commission lacks
7 jurisdiction to consider the petition before it
8 today; and No. 2, adopt Order 2018-3, which
9 is -- which has been provided here today, which
10 would dismiss this petition officially.

11 I will now defer over to Mr. King to expand
12 upon anything that is in the memo and add on to
13 my comments here.

14 MR. B. KING: Thank you, Madam Chairman and
15 Members of the Commission. Mr. Kochevar has
16 done an eloquent job in summarizing the staff
17 memo that he and I had prepared together. I
18 have nothing substantively to add. I entirely
19 agree with his opinion.

20 CHAIRMAN C. LAWSON: Thank you, Brad. So
21 for purposes of the discussion, is there a
22 motion to adopt the Order 2018-03 to dismiss
23 these petitions?

24 COMMISSION MEMBER CLAYTOR: Madam Chairman,
25 one, this is going to be an unfortunate motion

1 but, unfortunately, at times, when someone files
2 a petition or a motion pro se, they don't know
3 the law behind it, and apparently didn't ask
4 someone for help within that context.

5 But, obviously, we do not have jurisdiction
6 to hear this matter.. I agree wholeheartedly
7 with the legal memorandum that Mrs. King and
8 Kochevar have provided us, and I would move
9 adoption of the resolution dismissing the
10 petition for recount and contest.

11 CHAIRMAN C. LAWSON: I have a motion from
12 Mr. Claytor to adopt Order 2018-03, to dismiss
13 the petition. Do I have a second?

14 COMMISSION MEMBER HUCKLEY: Second.

15 CHAIRMAN C. LAWSON: I have a motion and a
16 second, and so now we'll proceed to discuss the
17 motion. I don't know if Mr. Notoras is present,
18 but if anyone -- if he or anyone wishes to make
19 a statement or discuss the motion, I'd be happy
20 to recognize you.

21 (No response.)

22 CHAIRMAN C. LAWSON: Okay. Is there
23 further discussion among the Commission?

24 (No response.)

25 CHAIRMAN C. LAWSON: If not, those in favor

1 of the motion, say aye?

2 THE COMMISSION: Aye.

3 CHAIRMAN C. LAWSON: Those opposed, nay?

4 (No response.)

5 CHAIRMAN C. LAWSON: The ayes have it. The
6 recount and contest petitions in this matter are
7 dismissed. We do have one other item.

8 COMMISSION MEMBER CLAYTOR: Madam Chairman,
9 I know this is probably a stupid question, but
10 do we need any action to release any materials?
11 I know there was a question about whether or not
12 materials were...

13 MR. B. KING: No materials.

14 COMMISSION MEMBER CLAYTOR: Okay.

15 CHAIRMAN C. LAWSON: Mr. Turner, do you
16 mind standing for a moment while I ask you a
17 question?

18 MAJOR L. TURNER: Yes, ma'am.

19 CHAIRMAN C. LAWSON: Is it true that no
20 materials were impounded?

21 MAJOR L. TURNER: That is correct.

22 CHAIRMAN C. LAWSON: So there is no reason
23 to ask to have any materials be released?

24 MAJOR L. TURNER: That is correct.

25 CHAIRMAN C. LAWSON: Okay. Thank you.

1 Thank you, Mr. Claytor.

2 Well, we do have one final item of business
3 for the Commission today, and that is the
4 consideration of Resolution 2018-2, which honors
5 Gordon Durnil for his many years of faithful
6 service as a member of this commission.

7 Many of you remember Mr. Durnil and,
8 unfortunately, his health and his -- it just
9 doesn't allow him to serve as commissioner any
10 longer. So he did turn in his resignation, and
11 reluctantly, we accepted it. But he certainly
12 was a faithful member of this commission, and so
13 Brad, I'm going to have you present the
14 resolution.

15 MR. B. KING: Thank you, Madam Chairman,
16 Members of the Commission. This is a short
17 resolution, but I think a deeply meaningful one.

18 Whereas, Mr. Gordon Durnil served as a
19 member of the Indiana State Recount Commission
20 from July 1, 1995 until April 23rd, 2018; and.

21 Whereas, Mr. Durnil served with distinction
22 during the numerous recounts and contest
23 proceedings conducted by the Commission during
24 that 23 year period; and.

25 Whereas, it is fitting that the Commission

1 acknowledge Mr. Durnil's dedicated service.

2 Now, therefore, be it resolved by the State

3 Recount Commission:

4 Section 1. The State Recount Commission
5 honors the service of Mr. Gordon Durnil as a
6 member of the Commission during the preceding 23
7 years.

8 Section 2. The Commission commends Mr.
9 Durnil for his dedication and valuable counsel
10 as a member.

11 Section 3. The Commission extends its best
12 wishes to Mr. Durnil in his future endeavors and
13 directs that a copy of this Resolution be
14 forwarded to Mr Durnil.

15 So resolved this 30th day of May 2018.

16 CHAIRMAN C. LAWSON: Thank you, Brad. Is
17 there a motion to adopt this resolution?

18 COMMISSION MEMBER CLAYTOR: Madam Chairman,
19 if you don't mind that coming from the minority
20 position, I have enjoyed working with Mr. Durnil
21 the few times that I have been on this
22 commission at different years, and he's always
23 great to work with.

24 I have certainly enjoyed working with him
25 and I would like to move forward this motion for

1 adoption.

2 CHAIRMAN C. LAWSON: Thank you for the
3 motion, Mr. Claytor. Do I have a second?

4 COMMISSION MEMBER HUCKLEY: Second.

5 CHAIRMAN C. LAWSON: Any further
6 discussion?

7 (No response.)

8 CHAIRMAN C. LAWSON: If not, those in favor
9 of the motion, say aye?

10 THE COMMISSION: Aye.

11 CHAIRMAN C. LAWSON: Those opposed, nay?

12 (No response.)

13 CHAIRMAN C. LAWSON: The ayes have it and
14 the resolution is adopted. Is there any further
15 business to come before the Commission at this
16 meeting?

17 (No response.)

18 CHAIRMAN C. LAWSON: If not, is there a
19 motion that the Commission do now adjourn?

20 COMMISSION MEMBER CLAYTOR: So moved.

21 CHAIRMAN C. LAWSON: And second?

22 COMMISSION MEMBER HUCKLEY: Second.

23 CHAIRMAN C. LAWSON: Second. Those in
24 favor, say aye?

25 THE COMMISSION: Aye.

1 CHAIRMAN C. LAWSON: Opposed, nay?

2 (No response.)

3 CHAIRMAN C. LAWSON: The ayes have it. The
4 meeting is adjourned. Thank you all. Thanks
5 for your time.

6 (Time noted: 9:20 a.m.)

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1 STATE OF INDIANA)
2 COUNTY OF HENDRICKS) SS:
3)

4 I, Rhonda J. Hobbs, RPR, a Notary
5 Public in and for the County of Hendricks, State
6 of Indiana at large, do hereby certify that on
7 the 30th day of May, 2018, I took down
8 stenographically the foregoing proceedings, and
9 that the transcript is a full, true and correct
10 transcript made from my stenographic notes.

11 IN WITNESS WHEREOF, I have hereunto
12 set my hand and affixed my notarial seal this
13 _____ day of _____, 2018.

14 
15 _____

16 N O T A R Y P U B L I C
17

18 My Commission Expires:

19 August 24, 2025

20 County of Residence:

21 Hendricks
22
23
24
25

Transcript of Hearing
May 30, 2018

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RESOLUTION 2018-2
STATE RECOUNT COMMISSION
HONORING THE SERVICE OF GORDON DURNIL
AS A MEMBER OF THE STATE RECOUNT COMMISSION

WHEREAS, Mr. Gordon Durnil served as a member of the Indiana State Recount Commission from July 1, 1995 until April 23, 2018; and

WHEREAS, Mr. Durnil served with distinction during the numerous recounts and contest proceedings conducted by the Commission during that 23 year period; and

WHEREAS, it is fitting that the Commission acknowledge Mr. Durnil's dedicated service;

NOW, THEREFORE, BE IT RESOLVED BY THE STATE RECOUNT COMMISSION:

SECTION 1. The State Recount Commission honors the service of Mr. Gordon Durnil as a member of the Commission during the 23 preceding years.

SECTION 2. The Commission commends Mr. Durnil for his dedication and valuable counsel as a member.


SECTION 3. The Commission extends its best wishes to Mr. Durnil in his future endeavors and directs that a copy of this Resolution be forwarded to Mr. Durnil.

SO RESOLVED, THIS THE 30th DAY OF MAY, 2018:

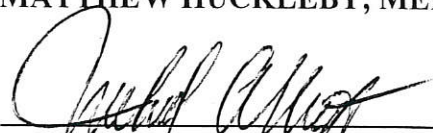
THE INDIANA STATE RECOUNT COMMISSION:



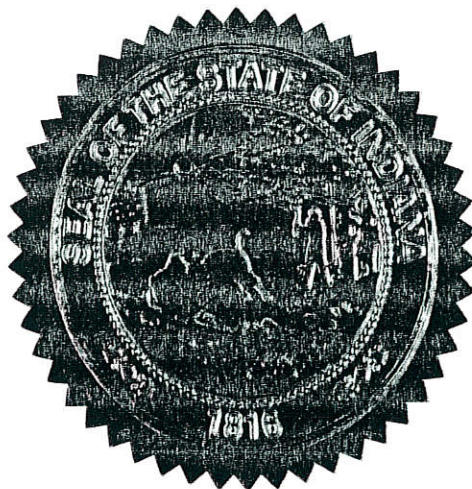
CONNIE LAWSON, CHAIRMAN



MATTHEW HUCKLEBY, MEMBER



MICHAEL A. CLAYTOR, MEMBER



**BEFORE THE
INDIANA RECOUNT COMMISSION**

IN THE MATTER OF THE
RECOUNT AND CONTEST
FOR THE DEMOCRATIC PARTY NOMINATION
FOR INDIANA STATE REPRESENTATIVE,
DISTRICT 25,

JUSTIN NOTORAS)
Petitioner,)
)
v.)
)
MAURICE FULLER)
Respondent.)
)

ORDER 2018-03
ORDER DISMISSING PETITIONS FOR RECOUNT AND CONTEST

FINDINGS OF FACT AND LAW

The Indiana Recount Commission convened a meeting on May 30, 2018. At that meeting, the Commission conducted a hearing on Petitioner's "Verified Petition for Recount and to Contest Election".

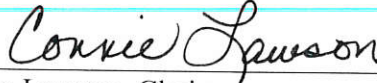
At the conclusion of this hearing, the Commission voted to grant the Motion to Dismiss, with three members (Lawson, Claytor, and Huckleby) voting "aye", and no member voting "nay".

Based on the information and arguments presented at the May 30, 2018 meeting, the Commission finds the following:

- (1) Indiana Code 3-12-11-2(a) requires that a candidate who desires a recount of the votes cast for a nomination or to contest a nomination must file a verified petition to do so with the Election Division not later than noon fourteen (14) days after election day.
- (2) The petitions filed in the above captioned matter do not comply with the verification requirements of state law.
- (3) The failure of the petitions to be properly verified deprives the Commission of jurisdiction regarding the petitions, and requires the dismissal of the petitions.

IT IS THEREFORE ORDERED that petitions filed by the Petitioner in this matter be and are hereby **DISMISSED**.

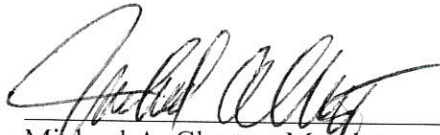
Dated this 30th day of May, 2018.



Connie Lawson, Chair
Indiana Recount Commission



Matthew Huckleby, Member
Indiana Recount Commission



Michael A. Claytor, Member
Indiana Recount Commission

Copies to:

Mr. Maurice Fuller, Respondent
Carroll County Election Board
Cass County Election Board
Clinton County Election Board
Tippecanoe County Election Board
White County Election Board

